

(1) The firm creates a record of each change in account type, including the name of the customer, the account number, the date the firm received the customer's request to change the account type, if applicable, and the date the change in account type became effective; and

(2) The firm, at least ten business days before the customer's account type is changed:

(i) Notifies the customer in writing of the date that the change will become effective; and

(ii) Provides the customer with the disclosures described in paragraph (b)(1) above.

(d) *Recordkeeping requirements.* The Commission's recordkeeping rules set forth in §§ 1.31, 1.32, 1.35, 1.36, 1.37, 4.23, 4.33, 18.05 and 190.06 of this chapter shall apply to security futures product transactions and positions in a futures account (as that term is defined in § 1.3(vv) of this chapter). These rules shall not apply to security futures product transactions and positions in a securities account (as that term is defined in § 1.3(ww) of this chapter); *provided*, that the SEC's recordkeeping rules apply to those transactions and positions.

(e) *Reports to customers.* The Commission's reporting requirements set forth in §§ 1.33 and 1.46 of this chapter shall apply to security futures product transactions and positions in a futures account (as that term is defined in § 1.3(vv) of this chapter). These rules shall not apply to security futures product transactions and positions in a securities account (as that term is defined in § 1.3(ww) of this chapter); *provided*, that the SEC's rules set forth in §§ 240.10b-10 and 240.15c3-2 of this chapter regarding delivery of confirmations and account statements apply to those transactions and positions.

(f) *Segregation of customer funds.* All money, securities, or property held to margin, guarantee or secure security futures products held in a futures account, or accruing to customers as a result of such products, are subject to the segregation requirements of section 4d of the CEA and the rules thereunder.

[67 FR 58297, Sept. 13, 2002]

§ 41.42 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Subpart E, §§ 41.42 through 41.49, and 17 CFR 242.400 through 242.406 ("this Regulation") are issued by the Commodity Futures Trading Commission ("Commission") jointly with the Securities and Exchange Commission ("SEC"), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act"). The principal purpose of this Regulation (Subpart E, §§ 41.42 through 41.49) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Exchange Act, relating to security futures.

(b) *Interpretation.* This Regulation (Subpart E, §§ 41.42 through 41.49) shall be jointly interpreted by the SEC and the Commission, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Exchange Act and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.* (1) This Regulation (Subpart E, §§ 41.42 through 41.49) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Exchange Act or section 19(b)(7) of the Exchange Act and, as applicable, section 5c(c) of the Commodity Exchange Act ("Act"), or a security futures intermediary from imposing additional margin requirements on security futures, including higher initial or maintenance margin levels, consistent with this Regulation (Subpart E, §§ 41.42 through 41.49), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (Subpart E, §§ 41.42 through 41.49) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act and that are effective in accordance with section 19(b)(2) of the

Exchange Act and, as applicable, section 5c(c) of the Act;

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act or derivatives clearing organizations registered under section 5b of the Act impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Exchange Act; and

(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act, that:

(1) Require such member to be registered as a floor trader or a floor broker with the Commission under section 4f(a)(1) of the Act, or as a dealer with the SEC under section 15(b) of the Exchange Act;

(2) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(3) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(4) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with this Regulation (Subpart E, §§ 41.42 through 41.49) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (Subpart E, §§ 41.42 through 41.49), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of customers. An exemption granted pursuant to this paragraph shall not operate as an exemption from any SEC rules. Any exemption that may be required from such rules must be obtained separately from the SEC.

§ 41.43 Definitions.

(a) For purposes of this Regulation (Subpart E, §§ 41.42 through 41.49) only, the following terms shall have the meanings set forth in this section.

(1) *Applicable margin rules* and *margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 41.44(a) of this subpart.

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Exchange Act.

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 1a(25)(A) of the Act, the product of the daily settlement price of such security